

SENATE BILL REPORT

SB 5413

As of March 13, 2013

Title: An act relating to metal theft.

Brief Description: Expanding metal theft provisions.

Sponsors: Senators Eide, Fain, Litzow, Chase, Hobbs, Conway, Delvin, Roach, Keiser and Sheldon.

Brief History:

Committee Activity: Law & Justice: 2/20/13.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Aldo Melchiori (786-7439)

Background: Malicious mischief is committed when a person knowingly and maliciously causes physical damage to the property of another. Theft in the first and second degree specifically include theft of metal wire, taken from a public service company or a consumer-owned utility as elements of the offenses.

Private metal property includes catalytic converters that have been removed from vehicles. Nonferrous metal property is metal property for which the value of the metal property is derived from the property's content of copper, brass, aluminum, bronze, lead, zinc, nickel, and their alloys. Nonferrous metal property does not include precious metals.

A scrap metal business is a scrap metal supplier, scrap metal recycling center, and scrap metal processor. At the time of a transaction, every scrap metal business doing business in this state must produce, wherever that business is conducted, an accurate and legible record of each transaction involving private metal property or nonferrous metal property. The record must include specified identification information of the seller and an affirmation that the private metal or nonferrous metal property is not stolen property. It is a gross misdemeanor to:

- deliberately remove, alter, or obliterate any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon an item of metal property in order to deceive a scrap metal business;
- enter into a transaction to purchase or receive any metal property where any manufacturer's make, model, or serial number, personal identification number, or

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- identifying marks engraved or etched upon the property have been deliberately and conspicuously removed, altered, or obliterated;
- knowingly make, cause, or allow to be made any false entry or misstatement of any material matter in any book, record, or writing required to be kept;
 - enter into a transaction to purchase or receive metal property from any person under the age of 18 years or any person who is discernibly under the influence of intoxicating liquor or drugs;
 - enter into a transaction to purchase or receive private metal property, nonferrous metal property, or commercial metal property with anyone whom the scrap metal business has been informed by a law enforcement agency to have been convicted of specified crimes;
 - sign the declaration knowing that the private metal property or nonferrous metal property subject to the transaction is stolen.
 - possess private metal property or commercial metal property that was not lawfully purchased or received; or
 - engage in a series of transactions valued at less than \$30 with the same seller for the purposes of avoiding the recording requirements.

Persons not subject to criminal penalties for violating the scrap metal laws may be punished, upon conviction, by a fine of not more than \$1,000. If the person violates the scrap metal statutes again within two years, each subsequent noncriminal violation is punishable, upon conviction, by a fine of not more than \$2,000.

Summary of Bill: For the purposes of determining damages applicable to a charge of malicious mischief, physical damages include the cost to repair the damages. Theft of metal wire taken from a city is added as an element that may support charges of theft in the first or second degrees.

A scrap metal business must not enter into a transaction for any nonferrous metal material with a person who does not have a nonferrous metal permit. A nonferrous metal permit is obtained from the county sheriff. The sheriff of each county must issue a nonferrous metal permit if the applicant:

- has a fixed residence or business in the sheriff's county;
- has not been convicted of a crime related to metal theft;
- provides a description of the type of nonferrous metal the applicant intends to sell and how the applicant intends to acquire the nonferrous metal; and
- provides their name, street address, telephone number, and current driver's license or other government-issued picture identification card.

The Washington Attorney General must prescribe a standard application form and a standard permit form to be used by sheriffs. The permit form must contain, at a minimum, the date of issuance and the name and address of the permit holder. Permits are valid for one year from the date of issuance. The sheriff must not charge an application fee in excess of \$20 and must retain a copy of any permit issued.

It is an unranked class C felony for any person:

- who does not have a valid nonferrous metal permit to enter into a nonferrous metal material transaction with a scrap metal business;

- who is not acting on behalf of a commercial enterprise to sell or trade nonferrous metal material; or
- who is representing a scrap metal business to enter into a transaction for nonferrous metal material with a person who does not have a valid nonferrous metal permit.

Personal property used to commit a violation of the scrap metal statutes or proceeds from any violation are subject to forfeiture. Personal property subject to forfeiture may be seized by any law enforcement officer upon process issued by any superior court having jurisdiction over the property. Seizure of personal property without process may also be made if:

- the seizure is incident to an arrest or a search under a search warrant;
- the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding;
- a law enforcement officer has probable cause to believe that the property is directly dangerous to health or safety; or
- the law enforcement officer has probable cause to believe that the property was used or is intended to be used in the commission of a felony.

Real property is subject to forfeiture if it was used with knowledge of the owner for the transaction of nonferrous metal materials. No real property of an innocent owner or innocent secured party is subject to forfeiture. Real property subject to forfeiture may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Real property must not be transferred or conveyed until 90 days after seizure or until a judgment of forfeiture is entered, whichever is later. However, real property seized may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if at the time the security interest was created, the secured party neither had knowledge of nor consented to the commission of a violation.

The law enforcement agency under whose authority the seizure was made must serve notice on the owner and other parties with an interest in the property within 15 days following the seizure. Service of notice of seizure of real property must be made according to the rules of civil procedure. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement, or a certificate of title, must be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule. Service by mail is deemed complete upon mailing within the 15-day period following the seizure.

If a person does not notify the seizing law enforcement agency in writing of the person's claim of ownership or right to possess seized items, within 45 days of the service of notice from the seizing agency in the case of personal property and 90 days in the case of real property, the item seized is deemed to be forfeited. The community property interest in real property may not be forfeited if the person did not participate in the violation.

If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession, the person must be afforded a reasonable opportunity to be heard. The notice of claim may be served by any method authorized by law or court rule.

The hearing is before the chief law enforcement officer of the seizing agency. If the seizing agency is a state agency, the hearing is before the chief law enforcement officer of the seizing agency or an administrative law judge. Any person asserting a claim or right may remove the matter to a court of competent jurisdiction. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

When property is forfeited the seizing law enforcement agency may:

- retain it for official use or, upon application by any law enforcement agency of this state, release such property to such agency for the exclusive use of enforcing the criminal law; or
- sell that which is not required to be destroyed by law and which is not harmful to the public.

By January 31 of each year, the seizing agency must remit to the state Treasurer an amount equal to 10 percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted is deposited into the state general fund. Retained property and remaining net proceeds are retained by the seizing law enforcement agency exclusively for the expansion and improvement of law enforcement activity. Retained money may not be used to supplant preexisting funding sources.

The Washington wire theft taskforce, consisting of representatives of local law enforcement and prosecution agencies representing the two most populous counties in the state, is established. The wire theft taskforce has the following duties:

- investigate and prosecute wire theft;
- compile annual data regarding the number of wire thefts and property damage throughout the state;
- estimate the funds needed to hire sufficient investigators to respond to wire thefts and prosecute;
- analyze the various methods of combating the problem of wire theft, which may include theft alert systems;
- develop and implement a plan of operation;
- propose state and regional policies regarding the regulation of wire theft; and
- report any findings to the Washington Association of Sheriffs and Police Chiefs by December 1, 2015.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Cities are experiencing a large increase in metal theft. The bill is necessary to prevent metal and wire theft from becoming even more frequent and costly to cities. Cities are implementing security measures, but that is not enough. Metal theft causes increased costs to all of our citizens. Some of this stolen property

is being shipped overseas. Rural areas are hit hard because there is less of a police presence. Customers can be seriously inconvenienced. The damage often exceeds the value of the cost of the materials. These crimes are difficult to prosecute because the metals are often processed before they can be located.

CON: This bill does nothing to increase enforcement. We need to focus on the enforcement of current laws without increasing the regulatory burden on legitimate business owners.

OTHER: The solution is more enforcement. Local police do not have enough resources to investigate these crimes. Honest businesses do not need more regulation.

Persons Testifying: PRO: Senator Eide, prime sponsor; Kim Clauson, Puget Sound Energy; Christine Brewer, Avista; Martin Durkin, citizen; Grant Nelson, WA Rural Electrical CO-OP Assn.; Adam Howell, Federal Way Police.

CON: Brad Tower, Schneitzer Steel.

OTHER: Jay Sternoff, ISRF Metal Recyclers.